

AMENDED IN ASSEMBLY JUNE 11, 2012

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 143

Introduced by Senator Rubio

January 31, 2011

~~An act to add the heading of Chapter 1 (commencing with Section 38570) to, and to add Chapter 2 (commencing with Section 38575) to, Part 5 of Division 25.5 of the Health and Safety Code, relating to air pollution. An act to amend Section 2770 of the Public Resources Code, relating to surface mining.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 143, as amended, Rubio. ~~California Global Warming Solutions Act of 2006: greenhouse gas emission reduction offsets: programs and incentives. Surface mining: idle mines.~~

The Surface Mining and Reclamation Act of 1975, with exceptions, prohibits a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to, and approved by, the lead agency for the operation. The act requires an operator, within 90 days of a surface mining operation becoming idle, to submit to the lead agency for review and approval, an interim management plan. The act authorizes an interim management plan to remain in effect for a period not to exceed 5 years, after which, the lead agency is authorized to take certain actions, including renewing the interim management plan for additional 5-year periods at the expiration of each 5-year period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

This bill would authorize the lead agency to renew the interim management plan for, at most, 2 additional 5-year renewal periods, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

~~The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for compliance with those regulations.~~

~~This bill would require the state board, on or before July 1, 2012, to adopt methodologies for determining the quantity of greenhouse gas emissions reduced through specified greenhouse gas emission reduction programs. The bill would require the state board to adopt regulations governing the creation of greenhouse gas emission reduction offsets based on investments in those programs for purposes of banking, trading, and using the offsets to comply with the market-based compliance mechanism adopted by the state board. The bill would require the state board to credit persons who invest in those programs with greenhouse gas emission offsets, based on a cost-effectiveness calculation determined by the state board, with specified exceptions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 2770 of the Public Resources Code is*
- 2 *amended to read:*
- 3 2770. (a) Except as provided in this section, a person shall not
- 4 conduct surface mining operations unless a permit is obtained
- 5 from, a reclamation plan has been submitted to and approved by,
- 6 and financial assurances for reclamation have been approved by,
- 7 the lead agency for the operation pursuant to this article.
- 8 (b) A person with an existing surface mining operation who has
- 9 vested rights pursuant to Section 2776 and who does not have an

1 approved reclamation plan shall submit a reclamation plan to the
2 lead agency not later than March 31, 1988. If a reclamation plan
3 application is not on file by March 31, 1988, the continuation of
4 the surface mining operation is prohibited until a reclamation plan
5 is submitted to the lead agency. For purposes of this subdivision,
6 a reclamation plan may consist of all or the appropriate sections
7 of any plans or written agreements previously approved by the
8 lead agency or another agency, together with any additional
9 documents needed to substantially meet the requirements of
10 Sections 2772 and 2773 and the lead agency surface mining
11 ordinance adopted pursuant to subdivision (a) of Section 2774,
12 provided that all documents which together were proposed to serve
13 as the reclamation plan are submitted for approval to the lead
14 agency in accordance with this chapter.

15 (c) If a person with an existing surface mining operation has
16 received lead agency approval of its financial assurances for
17 reclamation prior to January 1, 1991, the lead agency shall
18 administratively review those existing financial assurances in
19 accordance with subdivision (d) prior to January 1, 1992. The
20 review of existing financial assurances shall not be considered a
21 project for purposes of Division 13 (commencing with Section
22 21000). A person with an existing surface mining operation that
23 does not have financial assurances that received lead agency
24 approval prior to January 1, 1991, shall submit financial assurances
25 for reclamation for review in accordance with subdivision (d).

26 (d) The lead agency's review of a reclamation plan submitted
27 pursuant to subdivision (b) or of financial assurances pursuant to
28 subdivision (c) is limited to whether the plan or the financial
29 assurances substantially meet the applicable requirements of
30 Sections 2772, 2773, and 2773.1, and the lead agency surface
31 mining ordinance adopted pursuant to subdivision (a) of Section
32 2774, but, in any event, the lead agency shall require that financial
33 assurances for reclamation be sufficient to perform reclamation
34 of lands remaining disturbed. Reclamation plans or financial
35 assurances determined to substantially meet these requirements
36 shall be approved by the lead agency for purposes of this chapter.
37 Reclamation plans or financial assurances determined not to
38 substantially meet these requirements shall be returned to the
39 operator within 60 days. The operator has 60 days to revise the
40 plan or financial assurances to address identified deficiencies, at

1 which time the revised plan or financial assurances shall be
2 returned to the lead agency for review and approval. Except as
3 specified in subdivision (e) or (i), unless the operator has filed on
4 or before July 1, 1990, an appeal pursuant to subdivision (e) with
5 regard to nonapproval of the reclamation plan, or has filed on or
6 before January 1, 1994, an appeal pursuant to subdivision (e) with
7 regard to nonapproval of financial assurances, and that appeal is
8 pending before the board, the continuation of the surface mining
9 operation is prohibited until a reclamation plan and financial
10 assurances for reclamation are approved by the lead agency.

11 (e) A person who, based on the evidence of the record, can
12 substantiate that a lead agency has either (1) failed to act according
13 to due process or has relied on considerations not related to the
14 specific applicable requirements of Sections 2772, 2773, and
15 2773.1, and the lead agency surface mining ordinance adopted
16 pursuant to subdivision (a) of Section 2774, in reaching a decision
17 to deny approval of a reclamation plan or financial assurances for
18 reclamation, (2) failed to act within a reasonable time of receipt
19 of a completed application, or (3) failed to review and approve
20 reclamation plans or financial assurances as required by
21 subdivisions (c) and (d), may appeal that action or inaction to the
22 board.

23 (f) The board may decline to hear an appeal if it determines that
24 the appeal raises no substantial issues related to the lead agency's
25 review pursuant to this section.

26 (g) Appeals that the board does not decline to hear shall be
27 scheduled and heard at a public hearing within 45 days of the filing
28 of the appeal, or a longer period as may be mutually agreed upon
29 by the board and the person filing the appeal. In hearing an appeal,
30 the board shall only determine whether the reclamation plan or the
31 financial assurances substantially meet the applicable requirements
32 of Sections 2772, 2773, and 2773.1, and the lead agency surface
33 mining ordinance adopted pursuant to subdivision (a) of Section
34 2774. A reclamation plan or financial assurances determined to
35 meet these requirements shall be approved. A reclamation plan or
36 financial assurances determined not to meet these requirements
37 shall be returned to the person filing the appeal with a notice of
38 deficiencies, who shall be granted, once only, a period of 30 days,
39 or a longer period mutually agreed upon by the operator and the
40 board, to correct the noted deficiencies and submit the revised

1 reclamation plan or the revised financial assurances to the lead
2 agency for review and approval.

3 (h) (1) Within 90 days of a surface mining operation becoming
4 idle, as defined in Section 2727.1, the operator shall submit to the
5 lead agency for review and approval, an interim management plan.
6 The review and approval of an interim management plan shall not
7 be considered a project for purposes of Division 13 (commencing
8 with Section 21000). The approved interim management plan shall
9 be considered an amendment to the surface mining operation's
10 approved reclamation plan, for purposes of this chapter. The
11 interim management plan shall provide measures the operator will
12 implement to maintain the site in compliance with this chapter,
13 including, but not limited to, all permit conditions.

14 (2) The interim management plan may remain in effect for a
15 period not to exceed five years, at which time the lead agency shall
16 do one of the following:

17 (A) Renew the interim management plan for an additional period
18 not to exceed five years, which may be renewed for *one* additional
19 five-year ~~periods~~ *renewal period* at the expiration of ~~each~~ *the first*
20 five-year *renewal* period, if the lead agency finds that the surface
21 mining operator has complied fully with the interim management
22 plan.

23 (B) Require the surface mining operator to commence
24 reclamation in accordance with its approved reclamation plan.

25 (3) The financial assurances required by Section 2773.1 shall
26 remain in effect during the period that the surface mining operation
27 is idle. If the surface mining operation is still idle after the
28 expiration of its interim management plan, the surface mining
29 operation shall commence reclamation in accordance with its
30 approved reclamation plan.

31 (4) Within 60 days of the receipt of the interim management
32 plan, or a longer period mutually agreed upon by the lead agency
33 and the operator, the lead agency shall review and approve the
34 plan in accordance with its ordinance adopted pursuant to
35 subdivision (a) of Section 2774, so long as the plan satisfies the
36 requirements of this subdivision, and so notify the operator in
37 writing. Otherwise, the lead agency shall notify the operator in
38 writing of any deficiencies in the plan. The operator shall have 30
39 days, or a longer period mutually agreed upon by the operator and
40 the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal, or a longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining operation that remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) An enforcement action that may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h), or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

~~SECTION 1. The heading of Chapter 1 (commencing with Section 38570) is added to Part 5 of Division 25.5 of the Health and Safety Code, to read:~~

~~CHAPTER 1. GENERAL PROVISIONS~~

~~SEC. 2. Chapter 2 (commencing with Section 38575) is added to Part 5 of Division 25.5 of the Health and Safety Code, to read:~~

~~CHAPTER 2. INCENTIVES FOR CALIFORNIA GREENHOUSE GAS
EMISSION OFFSETS~~

~~38575. The Legislature finds and declares all of the following:~~
~~(a) This division provides for the adoption of rules and regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions to achieve the state's greenhouse gas emission reduction goals, and authorizes~~

1 the state board to provide for the use of market-based compliance
2 mechanisms to meet the requirements of this division.

3 ~~(b) This division directs the state board to ensure that the~~
4 ~~greenhouse gas emission reduction rules, regulations, programs,~~
5 ~~mechanisms, and incentives under its jurisdiction, to the extent~~
6 ~~feasible, direct public and private investment toward the most~~
7 ~~disadvantaged communities in California.~~

8 ~~(c) The state board has adopted a regulation to establish a~~
9 ~~cap-and-trade market-based mechanism designed to achieve the~~
10 ~~statewide greenhouse gas emission reductions required by this~~
11 ~~division.~~

12 ~~(d) The creation, banking, trading, and use of greenhouse gas~~
13 ~~emission offsets can help regulated entities further reduce the cost~~
14 ~~to comply with their cap-and-trade compliance obligations.~~

15 38576. ~~(a) On or before July 1, 2012, and in accordance with~~
16 ~~Section 38571, the state board shall adopt methodologies for~~
17 ~~determining the quantity of greenhouse gas emission reductions~~
18 ~~resulting from implementation of all of the following programs:~~

19 ~~(1) Voluntary energy efficiency programs.~~

20 ~~(2) Distributed electricity generation programs, including the~~
21 ~~California Solar Initiative.~~

22 ~~(3) Programs adopted and implemented by the Public Utilities~~
23 ~~Commission and the State Energy Resources Conservation and~~
24 ~~Development Commission that may reduce greenhouse gas~~
25 ~~emissions in the state.~~

26 ~~(b) Each methodology adopted pursuant to subdivision (a) shall~~
27 ~~include a determination of the cost-effectiveness of the program~~
28 ~~for which the methodology is adopted, specified in dollars per ton~~
29 ~~of greenhouse gas emissions reduced. The state board shall update~~
30 ~~the cost-effectiveness determinations from time to time, upon~~
31 ~~determining that an update is needed.~~

32 38577. ~~(a) (1) Commencing on July 1, 2012, for purposes of~~
33 ~~complying with the market-based compliance mechanism adopted~~
34 ~~by the state board pursuant to Section 38570, a person may invest~~
35 ~~in a program for which an emission reduction methodology has~~
36 ~~been adopted by the state board pursuant to subdivision (a) of~~
37 ~~Section 38576.~~

38 ~~(2) For purposes of this subdivision, the state board shall adopt~~
39 ~~regulations creating greenhouse gas emission reduction offsets~~
40 ~~that may be banked, traded, or used for compliance with the~~

1 ~~market-based compliance mechanism adopted by the state board~~
2 ~~pursuant to Section 38570.~~

3 ~~(b) A person who invests in a program pursuant to subdivision~~
4 ~~(a) shall be credited by the state board with a quantity of~~
5 ~~greenhouse gas emission offsets that shall be determined by~~
6 ~~dividing the dollar amount of the investment by the current~~
7 ~~cost-effectiveness of that program, as determined by the state board~~
8 ~~pursuant to subdivision (b) of Section 38576.~~

9 ~~(c) Notwithstanding subdivision (b), a person or entity shall not~~
10 ~~be credited with a greenhouse gas emission offset pursuant to~~
11 ~~subdivision (b) for undertaking a project that is required by law~~
12 ~~or regulation, or for which the person or entity has received another~~
13 ~~greenhouse gas emission offset.~~